

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN FEDERATION OF TEACHERS &
SCHOOL RELATED PERSONNEL, AFT, AFL-
CIO,

Plaintiff-Appellee,

v

UNIVERSITY OF MICHIGAN,

Defendant-Appellant.

UNPUBLISHED
March 22, 2007

No. 258666
Washtenaw Circuit Court
LC No. 04-000314-CZ

Before: Hoesktra, P.J., and Wilder and Zahra, JJ.

Wilder, J. (concurring)

I join with the majority on the basis that under *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997), we have reached the correct outcome in this case. However, I write separately to raise two points.

First, the Freedom of Information Act (FOIA) entitles a citizen “to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. MCL 15.231(2). To this end, FOIA generally requires disclosure of any public document upon request. MCL 15.233(1). Certain information is exempt from disclosure under FOIA, as provided in MCL 15.243. These exemptions are narrowly construed, and the burden to prove the application of the exemption rests with the party asserting it. *Bradley*, *supra* at 293.

Defendant asserts the application of the privacy exemption, MCL 15.233(1)(a), which permits exemption from disclosure of “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Under *Bradley*, “information is of a personal nature if it reveals intimate or embarrassing details of an individual’s private life.” *Id.* at 294. The *Bradley* definition combined “two slightly different formulations[,]” *id.*, which had been articulated in *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 547; 475 NW2d 304 (1991) (“personal” means “[o]f or pertaining to a particular person; private, one’s own Concerning a particular individual and his intimate affairs, interests or activities; intimate[.]” quoting *The American Heritage Dictionary of the English Language, Second College Ed*), and *Kestenbaum v Michigan State Univ*, 414 Mich 510,

549; 327 NW2d 783 (1982) (the threshold inquiry examines whether the requested information was “personal, intimate, or embarrassing”) (opinion of Ryan, J.). However, the *Kestenbaum* definition, unlike the definition adopted in *Swickard*, appears to have been derived from decisions interpreting the federal FOIA, and not from the plain meaning of the language used in the Michigan FOIA.¹

Because it does not appear that the operative definition of “personal” is consistent with the plain meaning that should govern under the applicable rules of statutory construction, *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000), I would ask the Supreme Court to consider revisiting *Bradley* in order to determine whether, on the facts presented here, information that might otherwise be considered “ordinarily impersonal . . . might take on an intensely personal character,”² such that the privacy exemption might properly be asserted as argued by the defendant.

Second, to the extent the *Bradley* test is not modified by our Supreme Court, it seems appropriate to consider whether the advent of the National do-not-call Registry, Pub.L. 108-82, § 1, Sept. 29, 2003, 117 Stat. 1006, as well as the creation of the host of methods, unknown to the Court in 1997, which are designed for illicit purposes such as identity theft, have any impact on whether the disclosure of the home addresses and telephone numbers requested is inconsistent with “the customs, mores, or ordinary views of the community”³ by which the applicability of the privacy exemption is evaluated.

/s/ Kurtis T. Wilder

¹ For example, *Black's Law Dictionary* defines personal to mean “of or affecting a person.” *Black's Law Dictionary* (8th ed.), p. 1179. *Random House Webster's College Dictionary* defines personal to mean “of, pertaining to, or concerning a particular person; individual; private . . .” *Random House Webster's College Dictionary* (2d revised ed.), p. 988. Neither *Black's*, *Random House*, nor *The American Heritage Dictionary* defines personal to include “embarrassing.”

² *Kestenbaum*, *supra* at 547.

³ *Bradley*, *supra* at 294.